APPENDIX A

Interstate Commerce Act, Section 15(7) (44 Stat. 1447-1448, as amended), 49 U.S.C. § 15(7):

"Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby, a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period, but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all

amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

Interstate Commerce Act, Section 22(1), (24 Stat. 387, as amended), 49 U.S.C. § 22(1), second restriction:

". . . and nothing in this part contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this part are in addition to such remedies; . . ."

Interstate Commerce Act, National Transportation Policy (54 Stat. 899), Note preceding 49 U.S.C. § 1:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without

unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

APPENDIX B

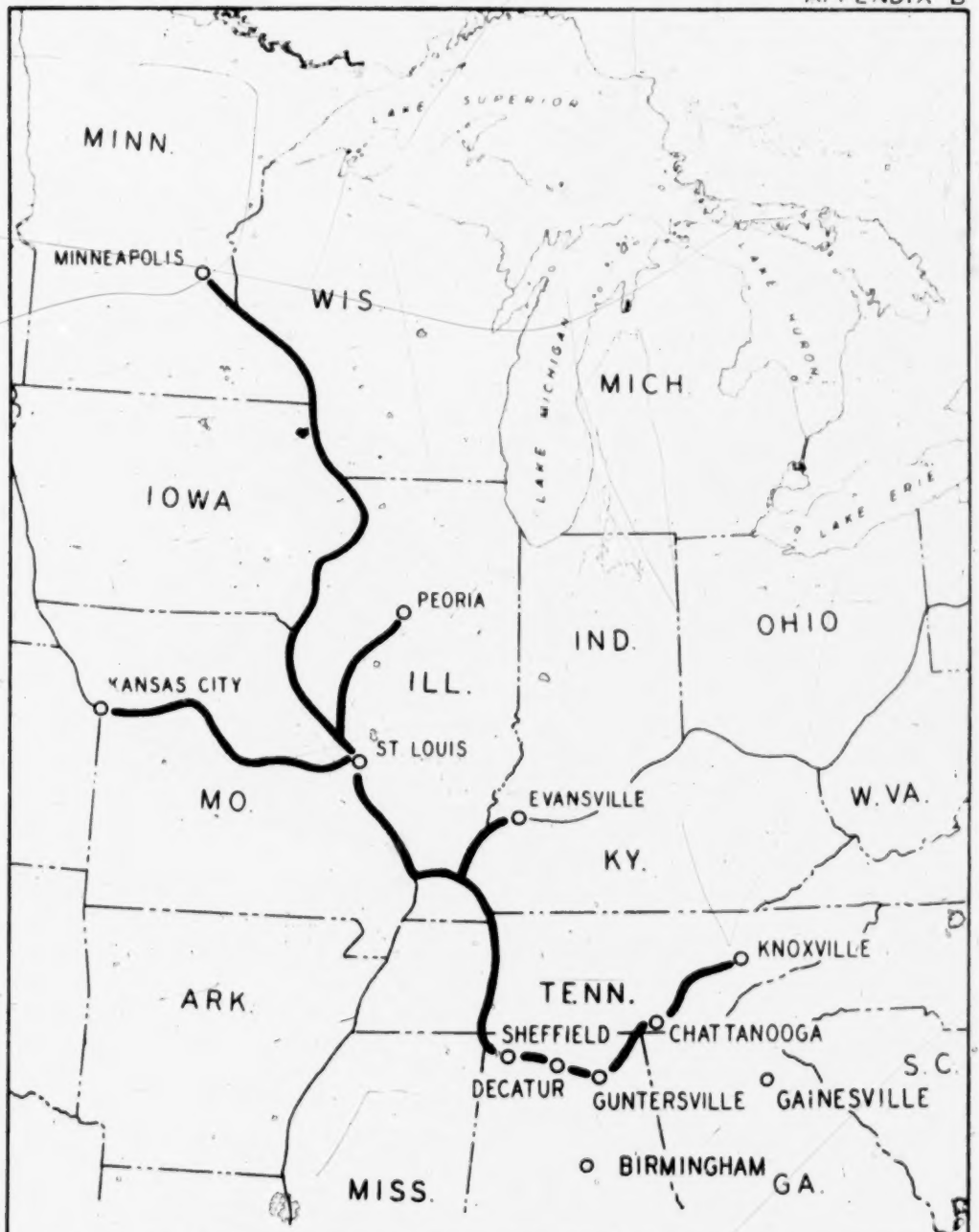

CHART SHOWING LOCATIONS OF TENNESSEE RIVER PORTS AND REPRESENTATIVE BARGELINE PORTS OF LOADING FOR GRAIN

APPENDIX C

(1) Excerpts from remarks of Representative Needham in debates on Mann-Elkins Act, May 5, 1910, in the House of Representatives, 45 Cong. Rec. 5847:

"Mr. Chairman, in my opinion, this provision is one of the most important, if not the most important, provision of the bill which we are now considering. There has been a general demand that the Interstate Commerce Commission should be clothed with power to suspend the operation of a rate, classification, regulation, or practice which the railways seek to put in operation until the reasonableness or justness of such new rate, classification, regulation, or practice can be determined.

"As the law now stands a railroad company can increase a rate or inaugurate a new classification, regulation, or practice, any one of which may be an increased burden upon the shipper, and the Interstate Commerce Commission is powerless to suspend its operation until after the rate, classification, regulation, or practice has been put in operation, whereupon the shipper can institute a proceeding before the commission to test the reasonableness or justness of such new burden. The remedy which the shipper now has is both to go into court and enjoin such contemplated action by the railroad company, and thereafter bring his action before the Interstate Commerce Commission.

"In the Sixtieth Congress and in the present Congress I introduced a bill the object of which was to accomplish the same purpose as is sought to be accomplished by the language now under consideration. It seems a useless and unnecessary expense to compel a shipper to go into court and enjoin the railroad company whenever he desires to prevent the inauguration of a new rate, classification, regulation, or practice, and it seems but reasonable to clothe the Interstate

Commerce Commission with the power in the first instance to suspend such action on the part of the carrier until the justness or reasonableness of the contemplated action may be heard and determined."

(2) Colloquy between Senator Cummins, proponent of unlimited suspension, and Senator Heyburn, proponent of limited suspension, in the Senate, May 24, 1910, 45 Cong. Rec. 6777:

"Mr. HEYBURN. The Senator is discussing one of the most important phases of the question under consideration, and I want to ask him whether he has given consideration—I presume he has, but I would like to know the result—to the question whether or not at the stage of the proceedings just pictured by the Senator, where the railroads would bring in such a vast mass of material as to make it impossible for the decision to be rendered within the limit, the parties might not go into a court of equity, and, setting forth those facts, ask that the rates be not put in force because of the wrongful act of the railroad company.

"Mr. CUMMINS. I have very grave doubt about the right of any shipper to institute a suit of that kind, but if he could it would be almost impossible for a court to find in the exercise of an absolute right upon the part of the railway companies any such invasion of the privileges of the shipper as to warrant the interven[illegible] a court.

"[illegible] HEYBURN. I should like to suggest—

"Mr. CUMMINS. If you will just allow me. But if that were so, I for one am not by my vote going to put any such burden upon the shippers of the country. I do not intend to drive them into any such litigation as is suggested, and which was suggested, as the Senator from Idaho will remember, on last Thursday by another distinguished member of this body. But what-

ever may be the legal merits of the proposition it is unfair and unjust to require of the shippers of the United States recourse to a litigation of the kind.

"Mr. HEYBURN. I should like to make one suggestion. The Senator will remember we have carried forward the present jurisdiction of the United States circuit courts for certain purposes outside of and beyond the jurisdiction that we have specifically conferred upon the new court, the court of commerce, and a shipper may now appeal to the circuit court, and that right is not taken away from him by any provision in this bill, where he is being unfairly dealt with."

(3) Text of Senator Elkin's statement in the Senate, June 2, 1910, 45 Cong. Rec. 7262-7263:

"Mr. ELKINS. The Senator wants to enjoin and set aside a rate that has not gone into effect pending the determination by the commission whether it shall become effective. Suppose the commission were to decide in favor of the shipper. You do not know. How can you enjoin a body or commission that has discretion, that has the right to decide a question, before it has decided and pending a hearing? The question has not been determined. It has not been decided. The amendment says 'pending a final determination.' Now, the Senator wants the carrier enjoined from doing what? From advancing rates? Suppose an application is made by the carrier to advance the rate. The commission upon complaint of the shipper opposes the advance and takes one hundred and twenty days in which to determine the question, and if it has not reached a conclusion in the meantime, then under this bill the commission may take six months more, making eleven months in which to determine it. A suit to enjoin could not be maintained and follow this amendment. It is impossible. It says:

Pending a final determination by said commission as to the reasonableness of such rate or rates in a then pending proceeding before said commission.

"The court can not enjoin a tribunal having the power and discretion to decide a case before it is decided. It is impossible. I submit that a court could not be asked to enjoin the commission, because no one can tell which way the commission will decide until it does decide. Nobody knows. This amendment says 'pending a final determiantion.' The rate does not go into effect until the final determination.

"We will take the case of an application on the part of the carrier to advance a given rate 10 cents a hundred. The shipper objects to it, and says it is unjust. The commission, under this bill, suspends the rate pending final determination. There is no court in the world that can reach the commission pending this final determination. You could not bring a suit to set aside, suspend, or enjoin. The court could not get jurisdiction of it, because it is not a determined question. I doubt if it could after the commission has decided against the shipper, because the commission is the legislative agent of the Government. The railroad can enjoin if the order is confiscatory. But you can not work it out under this amendment at all that the shipper can enjoin pending the hearing. There is no legal machinery to do it.

"If anyone deprives a citizen or any common carrier or anybody else of property without due process of law or without compensation, in violation of the fifth amendment, the aggrieved party has a right to go into any of the courts of the United States and seek relief. The same is true in the case of any irreparable injury. Anyone can go into a court in a case where irreparable injury is about to be perpetrated and get an injunction. I submit it is impossible to carry out in the courts

what is in the Senator's mind through the wording of this amendment."

(4) Text of Senator Cummins' statement in the Senate on December 4, 1919, 59 Cong. Rec. 143:

"The next section to which I call your attention is section 44, and in that section the only change that is of importance at this moment is in the length of time that the commission may suspend rates which are filed by the carrier.

"As the law now is, each carrier has a right, and is required, if it desires to change the rates, to file its schedule of rates with the Interstate Commerce Commission. The commission can then, upon summary investigation or inquiry, suspend those rates pending an investigation. Under the law as it is it has the authority to suspend them for 120 days, and then it was given the authority, as I recollect it, if it did not finish the inquiry within that time, to extend the time for another period of six months. The latter period has been shortened in this bill to a period of 30 days.

"The reason for that is this: In the first place, the Interstate Commerce Commission has been overworked. There is no body of men in the employ of the Government, or exercising governmental functions, upon which so great a weight of labor has fallen as the Interstate Commerce Commission, and it is utterly impossible for it to fulfill its full duties as the law now is. But we have undertaken in this bill to create a new governmental function known as the transportation board, and we have given to that board many of the important duties which are now performed by the Interstate Commerce Commission, and endeavored in that way to relieve the latter body of some of its labor; and we hope that we have accomplished that purpose to such an extent as that the commission will be able

promptly to decide all the matters which are brought before it.

"Broadly speaking, we have left with the Interstate Commerce Commission what might be described as semi or quasi judicial powers, rate making in all its phases, the valuation of railroad property in all its aspects, accounting absolutely necessary as an incident to rate making and to valuation. These are in the main the great branches of labor which are left with the Interstate Commerce Commission. The purely administrative duties, those duties which have to do with the physical operation of the railway properties, are transferred to the transportation board and many new duties are also given to the transportation board, one of which and probably the most important of which I commented upon yesterday.

"In view of this division of labor between the commission and the transportation board, the committee is of the opinion that the commission ought to pass upon the rates which are filed with it by the carriers at least within a period of five months. It is not fair either to the shipping public or to the carriers that a proposal for an increase or decrease of rates, as the case may be, shall remain uncertain and undisposed of for a period of more than five months. The provision is a limit of 120 days in the first instance, and then an extension, if necessary, of 30 days.

"In the latter part of section 44 there is another very important change in the law which I want Senators to observe. Under the interstate commerce act which now is, as you all know, the shipper may determine the route which his traffic shall take. It has been rather common in the past for railroad companies which were not satisfied with the routing which the shipper had determined upon to deliberately and knowingly divert it to some other line with which the initial car-

rier or some connecting carrier had more intimate relations than with the carrier over whose lines the shipper determined his traffic should go. There has been no remedy for that, and it has been practiced mainly at the expense of the short or weaker lines.

"The committee determined to correct it and has corrected it by providing that the line from which the traffic is thus diverted shall be entitled to recover its proportion of the earnings from the through rate just the same as if it had carried the traffic, and the line over which the traffic may actually go wrongfully will have the satisfaction of doing the business for nothing, a penalty which I think will very soon bring to an end this very objectionable practice."